

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1313 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNA TALUKA KHEDUT SAHAKARI KHANT UDYOG LTD

Versus

JAYALAZMI CHANDRASHANKER JANI

Appearance:

MR ND NANAVATI for Petitioner

MR PM RAVAL for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 24/04/96

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioner-society has challenged the judgment and award passed by the Gujarat State Co-operative Tribunal in Appeal No. 203 of 1981 dated 9.8.83 confirming the orders passed by the Board of Nominees at Rajkot in Lavad Case No. 254 of 1980 dated 10.8.1981.

2. The respondent-plaintiff has filed Lavad Suit No.254 of 1980 for the refund of amount of Rs.8840/- with interest thereon on the ground that the said amount was deposited by way of saving as well as as per document and agreement with the LIC and the Indian Finance Corporation. The claim of the plaintiff was denied by the society as the same is saving under the agreement and the document and the plaintiff is not entitled to refund of the said amount. The plaintiff had claimed the said amount on her having resigned as the member of the petitioner society. Board of Nominees Rajkot passed an award holding that the plaintiff has already transferred all her shares and has become non-member of the society and the society has, as per its rules and byelaws, given permission for the same. Said rules applies to the members of the society only and not to the non-members. The plaintiff having seized to be the member of the society, said regulations now would not apply to the petitioner. It may be stated that the plaintiff would not be entitled to refund of the said amount till she was a member of the society. Holding the claim of the society to be false and improper one, the Board of Nominee passed the judgment and award as aforesaid.

3. Said judgment and award passed by the Board of Nominee, Rajkot was challenged by the society before the Gujarat State Co-Op. Tribunal by filing appeal as aforesaid and the Tribunal confirmed the judgment and award passed by the Board of Nominee holding that the membership of the plaintiff has seized from the year 1974-75 and thereafter, on her seizing to be the member of the society, new member must have entered. As per rule 34, liability may continue for a period of three years and as the said period has expired, there would be no reason for not refunding the said amount to the non-member, that is, the plaintiff. Name of the plaintiff is not there as debtor and her resignation from the membership of the society has been accepted by the society and, therefore, rule which is applicable to the member would not apply to a member on his seizing to be the member of the society. In view of these facts, award passed by the Board of Nominees, Rajkot is confirmed by the Tribunal in appeal as aforesaid.

4. Any amount deposited be under an agreement or a document is liable to be refunded on the said document or an agreement coming to an end. The amount claimed by the plaintiff was a deposit as a member of the petitioner society and she was entitled to the refund of the said amount on her seizing to be a member of the petitioner society, may be subject to certain charges on the same.

In this case, the petitioner society has not come out with a case that there is any charge or liability of the plaintiff as a member which she has to discharge even after her seizing to be a member of the society. In view of these facts, the plaintiff was entitled to the refund of the amount on her seizing to be a member of the society. Thus, there is no reason to interfere with the impugned judgment and award passed by the Board of Nominee in Lavad Suit No. 254 of 1980 dated 10th August, 1981 as confirmed by the Gujarat State Co-Op. Tribunal in Appeal No. 203 of 1981.

5. In the result, the petition fails and the same is hereby dismissed. Rule discharged. No order as to costs.

Vyas*